

Meeting of 2011-8-23 Regular Meeting

MINUTES
LAWTON CITY COUNCIL REGULAR MEETING
AUGUST 23, 2011 6:00 P.M.
WAYNE GILLEY CITY HALL COUNCIL CHAMBER

Mayor Fred L. Fitch Also Present:
Presiding Larry Mitchell, City Manager
 Frank V. Jensen, City Attorney
 Traci Hushbeck, City Clerk
COL Paul Hossenlopp, Fort Sill Liaison

Mayor Fitch called the meeting to order at 6:02 p.m. Notice of meeting and agenda were posted on the City Hall notice board as required by law. Invocation was given by Reverend John C. Thompson, Greater Galilee Baptist Church, followed by the Pledge of Allegiance.

ROLL CALL

PRESENT: Bill Shoemate, Ward One
Michael Tennis, Ward Two
Rosemary Bellino-Hall, Ward Three
Jay Burk, Ward Four
Rex Givens, Ward Five
Richard Zarle, Ward Six
 Doug Wells, Ward Eight

ABSENT: Stanley Haywood, Ward Seven

PRESENTATION OF CERTIFICATE OF RECOGNITION TO THE FORGOTTEN SOLDIERS MOTORCYCLE CLUB

Mayor Fitch and Kim Shahan, Parks and Recreation Director, presented a Certificate of Recognition to members of the Forgotten Soldiers Motorcycle Club for their work in the Adopt-A-Park program.

CONSENT AGENDA: The following items are considered to be routine by the City Council and will be enacted with one motion. Should discussion be desired on an item, that item will be removed from the Consent Agenda prior to action and considered separately.

Wells requested items #8, #10 and #13 be considered separately. Jensen stated item #4 needs to be stricken from the agenda at the request of the applicant.

MOVED by Burk SECOND by Tennis to approve the consent agenda with the exception of items #4, #8, #10 and #13. AYE: Zarle, Wells, Shoemate, Tennis, Bellino-Hall, Burk, Givens. NAY: None. MOTION CARRIED.

1. Consider the following damage claims recommended for approval: Veronica Menefee-Reed in the amount of \$2,254.21 (**Res. 11-71**), Charles Young in the amount of \$70.00, Barbara Ann Whiting in the amount of \$2,251.26 (**Res. 11-72**) and Gregory Broomfield in the amount of \$7,086.20 (**Res. 11-73**). Exhibits: Legal Opinions/Recommendations, Resolution No. ____, Resolution No. ____, Resolution No. ____.
2. Consider authorizing the City Attorney to accept the sum of Five Thousand and 00/100 Dollars (\$5,000.00) for settlement of the City's subrogation interest in the personal injury case of William Ryan. Exhibits: None.
3. Consider adopting a resolution ratifying the actions of the City Attorney in filing and making payment of the judgment in the Workers' Compensation case of Michael Meador in the Workers' Compensation Court, Case No. 2009-09660A. Exhibits: **Resolution 11-74**.
4. Consider approving an Outside Water Sales Contract with Tennessee Avenue Water Association, which would serve a commercial and industrial area for Lots 2-5, Block 12, Lots 1-19, Block 11, and Lots 4-6, Block 7, Wedgewood Addition, and authorize the Mayor and City Clerk to execute the contract. Exhibits: Location Map.

Contract is on file with the City Clerk s Office. **STRICKEN.**

5. Consider approving the sales and use tax collection agreement with the Oklahoma Tax Commission. Exhibits: Letter from the Oklahoma Tax Commission Dated August 1, 2011 and Streamlined Sales Tax Agreement.

6. Consider declaring old Police Radios as surplus property, and donating twelve (12) radios to the Comanche County Sheriff s Department. Exhibits: None.

7. Consider approving contracts with Ed Walewski (Needfire), Enye Music (Tekumbe), and Nancy Fly Agency (Del Castillo) performers at the 2011 International Festival and authorize the Mayor and City Clerk to execute the agreements. Exhibits: Contracts on file in City Clerk s office.

8. Consider designating a portion of property in McMahon Park as the future development site for a BMX Bike Track. Exhibits: Track Construction Information Sheet and site map for project.

Wells stated that we are self insured, but he questioned if we would have to have an insurance policy to cover accidents.

Shahan stated it would fall under the current policy we have.

Jensen stated we operate under the Governmental Tort Claims Act without any premises liability. We do not have insurance.

Wells stated if someone gets hurt then we could be sued.

Jensen stated we can always be sued, but whether we are liable or not is another issue.

Wells stated if we lost it would go on the tax rolls if it was over \$400.

Jensen stated that is correct.

Wells stated this is an approval to just designate the site, it is not approval to actually build the park.

Shahan stated since they have a designated piece of property designed in the plan for this purpose and it is so close to the work being done on 38th street, he felt they should take the opportunity to get the dirt that will come off of 38th Street.

Jennifer Hawkins, 1412 NW Euclid, stated she supports the approval of a BMX park. She stated her son and his friends enjoy the extreme sport of BMX but there is no place in town to ride or practice their stunts. She encouraged the council to build the park.

MOVED by Wells SECOND by Zarle to designate a portion of property in McMahon Park as the future development site for a BMX Bike Track. AYE: Givens, Zarle, Wells, Shoemate, Tennis, Bellino-Hall, Burk. NAY: None. MOTION CARRIED.

9. Consider canceling the lease agreement between Teen Court, Inc., and the City of Lawton, Oklahoma and accepting their letter of gratitude for the office space extended to the Teen Court at the Carnegie Library Town Hall, but due to reconsideration of the decision to move to the Carnegie Library Town Hall, Teen Court, Inc. would be remaining at their present location at the United Way offices. Exhibits: Letter from Letter from Director of the Teen Court.

10. Consider accepting letter to cancel lease on March 31, 2012 with Fisherman s Cove lease to Dean W. Robbins (Lessee of Fisherman s Cove) and re-establish the Fisherman s Cove camping facility as a City managed camping and RV destination. Exhibits: Letter from Mr. Dean Robbins.

Wells stated he does not know if canceling is the correct terminology. He is just not going to renew his lease or take advantage of the five year option.

Jensen stated Mr. Robbins is not going to exercise his last option.

Wells stated since they have time he feels they should write a new contract and go out for bids and see what we get before we just decide to take it over in house. He questioned how many people it would take to run it.

Shahan stated it would be established as an RV site similar to what we already have, so the existing staff would just take care of this location.

Wells stated someone will have to be there to take money for the sites and Mr. Robbins sells fishing licenses.

Shahan stated he does sell licenses based on the times he is open.

Wells stated the city would have to provide staff to be there sometimes to do this sort of thing.

Shahan stated that would not be his recommendation of operation. The RV site is similar to what we have on the east camp ground at Lake Lawtonka and our fee collectors drive to all of the camp sites throughout both lakes. There are not site supervisors at the camp sites.

Mayor Fitch stated they would have to obtain their fishing license before they get to the camp site. There will not be a concession there.

Shahan stated he would not recommend for us to build and operate a store there. It is not financially feasible. He stated the concept would be to establish this as an RV location since it is three miles off of I-44.

Wells questioned how many people live out there year round.

Shahan stated there are twenty eight that are there. There are forty eight sites.

Wells stated if we make them move we will lose the income of twenty eight people times \$95 and 12 months.

Shahan stated no, we are being paid \$1,400 annually on the contract we have with that particular operation.

Wells stated if we left those people out there we would get \$95 a month per person.

Shahan stated there are a lot of other things to consider like management issues.

Wells questioned how long some of the people have lived there.

Shahan stated it has been in existence for thirty plus years. He stated it definitely needs to be looked at in terms of being managed completely different or a new policy needs to be established.

Burk stated the place is a disaster and a junky mess and this would be the best thing to happen to that site.

Shahan stated a few years ago they did request a grant from the Oklahoma Department of Wildlife to improve that location and they will be building another access point for fishing and a bathroom facility with that grant money. That will be coming before the council in the next few months.

Wells stated if we have had people out there for twenty or thirty years he feels it would be wrong to do this. He would be okay if they grandfathered them in and did not let future ones in.

Burk stated most of those that have been there for years sold and got out because the circumstances got so bad.

Wells suggested they talk more about this issue and have staff report back to council on the number of people who will be affected and how long they have lived there.

Shoemate stated this is similar to what was done at Robinson s Landing. People had been living there for years, but the place was getting run down. He stated this will improve the place and make it look much nicer.

Wells questioned if they moved people out of Robinson s Landing.

Shoemate stated yes and now the park area looks tremendous.

MOVED by Burk SECOND by Shoemate to accept a letter not renewing the lease on March 31, 2012 with Fisherman s Cove lease to Dean W. Robbins and re-establish the Fisherman s Cove camping facility as a City managed camping and RV destination. AYE: Zarle, Wells, Shoemate, Tennis, Bellino-Hall, Burk, Givens. NAY: None. MOTION CARRIED.

11. Consider approving the record plat for Dove Creek Addition, Part 4A, and accepting the improvements, performance bond for street improvements, maintenance bonds and easements outside the platted area. Exhibits: Plat Map. Performance Bond, Maintenance Bonds and Easements are on file in City Clerk s Office.

12. Consider approving the construction plans for the University Drive Closure Project. Exhibits: Location Map.

13. Consider awarding contract (RFPCL11-036) Emergency Generator Maintenance to Elite Power Services, Inc of Edmond, OK. Exhibits: Department Recommendation, Abstract, Price Sheet.

Wells questioned if staff could total the columns on the bid sheet.

Jerry Ihler, Public Works Director, stated the abstract should have been attached. The total bid was \$23,615. They were \$300 lower than the second bid.

MOVED by Wells SECOND by Zarle to award contract (RFPCL11-036) Emergency Generator Maintenance to Elite Power Services, Inc of Edmond, OK. AYE: Wells, Shoemate, Tennis, Bellino-Hall, Burk, Givens, Zarle. NAY: None. MOTION CARRIED.

14. Consider approving appointments to boards and commissions. Exhibits: None.

Mayor s Commission On The Status Of Women

Adriene Davis

Ward 5

926 SW 34th Street

Lawton, Oklahoma 73501

Term 08/23/2013

15. Consider approval of payroll for the period of August 8 - 21, 2011.

NEW BUSINESS ITEMS:

16. Hold a public hearing and consider adopting an ordinance closing, vacating, and discontinuing certain streets, easements, and other rights-of-way within a portion of the North Addition, located in the Downtown Redevelopment Project area. Exhibits: Ordinance No. 11-___ and Location Map.

Richard Rogalski, Planning Director, stated as part of the Downtown Redevelopment Project, several streets, alleys, and public utility easements need to be closed and vacated. On February 8, 2011, City Council adopted Ordinance No. 11-4, closing, vacating and discontinuing the initial group of public ways to include portions of NW Ferris Avenue, NW Euclid Avenue, NW Dearborn Avenue, NW Columbia Avenue, NW Bell Avenue, Arlington Avenue, NW 1st Street, and the west half of North Railroad Street from Ferris Avenue, south to the alley between Arlington Avenue and Gore Boulevard. The ordinance concerns the closure, vacation and discontinuance of the majority of the remaining public ways within the Downtown Redevelopment Project between NW Arlington Avenue and NW Ferris Avenue, extending east of NW 2nd Street to NW 1st Street. On July 12, 2011, the Council set the date of August 23, 2011, to hold a public hearing on the proposed closings. On July 22, 2011, notice of public hearing was mailed to property owners within 300 feet and to private utility companies, and on August 7, 2011, a notice of public hearing was published in *The Lawton Constitution*. No objections have been received.

Wells questioned if the objection letter from Brad Burgess, Attorney representing Centerpoint Energy, was in reference to this agenda item.

Mitchell stated yes.

Mayor Fitch stated he did not read this as an objection letter, he felt it was regarding the costs associated with this development.

Wells stated the letter says that it is an objection to the closure and vacation of public ways and easements by Centerpoint Energy Resources Corp.

Rogalski stated the current ordinance does create a temporary utility easement over all of the areas that are being closed so that no utilities have to move at this time. They are waiting for some additional planning work to be done on the project site. Once they have the new utility layouts they will create new utility corridors and utility easements for all of these relocated utilities.

Jensen stated they have added specific language to address the concerns of the utility companies and others who may object. This issue has been adequately addressed.

Wells questioned if the City will be obligated to pay something other than what would normally be taken care of.

Mitchell stated when they get to the point of actually making the relocations there will be some cost incurred. They are simply putting the City on notice that they have those utilities in place.

PUBLIC HEARING OPENED. No one appeared to speak and the public hearing was closed.

MOVED by Givens, SECOND by Shoemate to adopt **Ordinance 11-40**, waive the reading of the ordinance, read the title only and declaring an emergency. AYE: Wells, Shoemate, Tennis, Bellino-Hall, Burk, Givens, Zarle. NAY: None. MOTION CARRIED

(Title read by City Attorney)

Ordinance 11-40

An ordinance closing, vacating, and discontinuing certain streets, easements and other rights-of-way in portions of the north addition to the city of Lawton, Oklahoma, according to the recorded plats thereof, all in accordance with the Lawton D6 Urban Renewal Project Plan and the Lawton Downtown Economic Development Project Plan; and declaring an emergency

17. Consider approving a resolution authorizing the submittal of a grant application for State Local Government Matching Payments Pursuant to the Oklahoma Local Development and Enterprise Zone Incentive Leverage Act, Title 62, Oklahoma Statutes, Section 840, et seq. Exhibits: Resolution, Letter from Center for Economic Development Law, Copy of the Grant application package available at the City Clerk's office for review and Letter from Applied Economics.

Mitchell stated the Lawton Economic Development Authority (LEDA) approved the submittal of the application last week and they are requesting the council take similar action tonight. He stated this program was initiated through HB1786 which allows cities who are experiencing growth from military bases to capture state sales tax and they believe the project being proposed for the phase I area will be reviewed favorably and as a result, will allow us to capture state sales tax revenue. He stated Dan Bachelor is in attendance to answer any questions.

Wells stated everyone needs to understand that until there is actually something built down there and sales take place there will be no reimbursement.

MOVED by Givens, SECOND by Tennis to adopt **Res. 11-75**. AYE: Shoemate, Tennis, Bellino-Hall, Burk, Givens, Zarle, Wells. NAY: None. MOTION CARRIED

18. Consider an ordinance pertaining to business amending Sections 7-24-3-2433 and 7-24-3-2438.1, Division 7-24-3, Article 7-24, Chapter 7, Lawton City Code, 2005, by modifying the criteria for denial, suspension or revocation of a taxicab driver's permits, providing for severability, and establishing an effective date. Exhibits: Ordinance 11-__.

Chief Ronnie Smith, Lawton Police Department, stated he requested that this ordinance be changed after he had an individual come in and apply for a taxi permit who had been convicted of rape, robbery and selling drugs and had spent the past nine years in prison. He stated he was eligible for a taxi permit because three years had passed. He has asked for this ordinance to be passed so that he can deny permits to these types of people.

Wells stated he agrees, but there are a lot of things that are covered in the ordinance that they can deny. He questioned if there was a time period on some of these things.

Chief Smith stated it is covered under the misdemeanor part. He stated this is covering the felony part.

Wells questioned how long they could be denied. He stated he agrees that some things should be denied permanently but some things are not so clear.

Jensen stated they are indefinite until they reapply and then they reconsider based upon the circumstances.

Wells stated then the Chief can decide if everything is okay.

Chief Smith stated they look at the record and then reconsider.

MOVED by Zarle, SECOND by Givens to adopt **Ordinance 11-41**, waive the reading of the ordinance, read the title only and establishing an effective date. AYE: Tennis, Bellino-Hall, Burk, Givens, Zarle, Wells, Shoemate. NAY: None. MOTION CARRIED

(Title read by City Attorney)

Ordinance 11-41

An ordinance pertaining to business amending Sections 7-24-3-2433 and 7-24-3-2438.1, Division 7-24-3, Article 7-24, Chapter 7, Lawton City Code, 2005, by modifying the criteria for denial, suspension or revocation of taxicab driver's permits, providing for severability, and establishing an effective date.

REPORTS: MAYOR/CITY COUNCIL/CITY MANAGER

Givens stated he keeps seeing in the paper that some council person is saying that they are opposed to the west side development. He stated he wants to be on record that he is for any development in this town whether it be the 2nd Street project or out west. There is plenty of room for everything.

Shoemate stated that he was asked why he wouldn't be for the west side project, He is not opposed to any project, but he would not support the west side project over the 2nd street project after they have invested all this time and money. He is afraid that if the west side project opens first they will lose some businesses on 2nd street. He wants to see the 2nd street project done. He stated he was asked to present a proclamation for Deborah Bailey Harris for her 75th Birthday. He stated her family and his have been friends for a long time and it was a privilege for him to present the proclamation.

Mitchell stated a police graduation will be held on Friday for 18 officers.

Jim Russell, Human Resources Director, distributed a handout on employment stats. He stated the tables reflect the ethnic diversity of the employees for the City of Lawton for the past year. The numbers were pulled from their EEOC files in July. He stated total minority count has increased 2.1% from 18.4% last year to 20.5% this year. He stated the numbers pulled for supervisors were from division supervisors and up. Field supervisors were not included in this count but it does include professionals such as the City Attorney's office and the Human Resources office. Those account for 75 positions and out of those 75 positions, 27 are filled with minority personnel for a total of 36%.

Ihler distributed a hard copy of a power point presentation for the 2012 CIP. Mitchell stated the presentation would be available on flash drive for anyone who would like to make a presentation to any community groups. He stated the presentation represents a good overview of CIP programs and what is proposed under the 2012 program.

Tenis questioned how they would get this information to the public.

Mitchell stated it is available in his office in hard copy or on flash drive and it will also be on the City's website soon.

Chief Bart Hadley, Lawton Fire Department, stated there have been some changes in state law that require a review of our ordinance and prior to the City Attorney's office completing that review with updates, staff met to see if there were other changes that would be needed to the fireworks ordinance. Based on that meeting a decision was made to bring this issue to council and seek some direction. He stated Broken Arrow is the only other city that allows the sale, possession and discharge. Most communities do not allow discharge in their city limits much like Lawton and the reason they have gone the extra step to not allow the sale or possession is because it is confusing to the public. Currently our ordinance allows the sale and possession inside city limits and when there is an illegal discharge it is virtually impossible to enforce because as a misdemeanor it has to be committed in the presence of the police officer. He stated he would like to see if the council is interested in pursuing this change to the ordinance.

Tenis stated that Broken Arrow charges a \$20 permit fee. He questioned if this was to defray costs.

Chief Hadley stated the ordinance in Broken Arrow requires that whoever gets the permit has to be present during the discharge of the fireworks and they have to give the address/location of where those fireworks will be discharged.

Burk stated that the fireworks leave a mess. He questioned the sales tax revenue from the sale of fireworks.

Chief Hadley stated he did not have that information but he could get it.

Mitchell stated they could try to find it out through the Oklahoma Tax Commission.

Burk stated they would basically put a local person out of business. They could move to the county and sell the fireworks.

Chief Hadley stated the ordinance they would suggest would not allow the sale of retail fireworks. Wholesale fireworks would be exempted.

Wells questioned the difference between retail and wholesale.

Mayor Fitch stated the retailers would sell them out of the stands and wholesalers sell to the retailers.

Burk stated he does not see a problem with banning the sale of firework when they cannot discharge them in the city limits.

Mayor Fitch stated it sounds like the council does not object to Chief Hadley and staff working on the changes to bring back to the council.

Chief Hadley stated the clean up at the lakes last year cost the City of Lawton approximately \$12,000. He stated it would be his recommendation to provide a public display and do away with any individual discharges.

Mayor Fitch stated he was selected as a member of the board of directors for the Oklahoma Municipal League and he has been put on an economic development council within the Mayor s Council. He stated they have met twice and it is very interesting to see what other communities are doing in the way of economic development. On three or four different occasions it was mentioned by fellow Mayors across the state regarding the successes we are having in Lawton. He stated he is very proud to represent this city.

The Mayor and Council convened in executive session at 6:59 p.m. and reconvened in regular, open session at 8:15 p.m. Roll call reflected all members present.

BUSINESS ITEMS: EXECUTIVE SESSION ITEMS

19. Pursuant to Section 307B.4, Title 25, Oklahoma Statutes, consider convening in executive session to discuss a proposed settlement of the City s claim for reimbursement of expenses resulting from the motorcycle accident of Officer John Foster and, if necessary, take appropriate action in open session. Exhibits: None.

Mayor Fitch read the title of item #19.

MOVED by Burk, SECOND by Givens to approve the settlement of the third party insurance carrier policy limits relating to the City s claim for reimbursement of expenses resulting from the motorcycle accident of Officer John Foster in the amount of \$20,000. AYE: Givens, Zarle, Wells, Shoemate, Tennis, Bellino-Hall, Burk. NAY: None. MOTION CARRIED

20. Pursuant to Section 307B.1, Title 25, Oklahoma Statutes, consider convening in executive session for the semiannual performance employee review of Traci L. Hushbeck as City Clerk, and in open session take other action as necessary. Exhibits: None.

Mayor Fitch read the title of item #20. No action was taken.

21. Pursuant to Section 307B3 and C10, Title 25, Oklahoma Statutes, consider convening in executive session for the purposes of conferring on matters pertaining to economic development, including the purchase/transfer of property and financing in connection with the Lawton Downtown Redevelopment Project, for the hotel-conference center and the mixed-use commercial retail establishments and take appropriate action, if necessary, in open session. Exhibits: To be distributed in executive session.

Mayor Fitch read the title of item #21. No action was taken.

AUDIENCE PARTICIPATION: None.

There being no further business to consider, the meeting adjourned at 8:18 p.m. upon motion, second and roll call vote.

/s/ Fred L. Fitch
FRED L. FITCH, MAYOR
ATTEST:

/s/ Traci L. Hushbeck
TRACI HUSHBECK, CITY CLERK

